G. R. S. 58]

Previous references.

File No. 17-14

1914.15

Serial Nos. 1-3

(Legn.)

Later references.

(18)

Preserve for 11/20

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 – 3

Part B for March 15

SUBJECT.

Amendment of section 34 of the Guardian & Wards Regn. 1911

---

1) To the Regr Chief Ct 8230 of 21.7.14.
Calls for the opinion of the Chf Ct

2) From the Same Office 1,858/115 of 28/10/14.
Submits their opinion in the matter

3) To the Regr Chief Ct } J 3170–1.
Dt Bangalore } of 20/3/15
States that it is not necessary at present to amend Sect 34.

GPB—3,500—21-7-14

M. G. Hosmani
13/4/15.

G.R.S. 11] 1916-15

GENERAL AND REVENUE SECRETARIAT.

(Legs)

NOTES.

File No. 17-14

FILE HEADING.

Amendment of sec: 34 of the Guardians and Wards Regn, 1911
(S.R.A. 17-1913

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

GPB—35,000—15 6-12

SUBJECT No. 17.

Amendment to Guardians and Wards Regulation.

Mr. C Krishnamurti, Law Association, Bangalore.

Summary of discussion.—Amendment of Section 34 of the Guardians and Wards Regulation, V of 1911, so as to enable the Court to proceed against the surety without the necessity of ~~obtaining the~~ any assignment of the surety bond, is prayed for.

Reply of Government.—Noted.

G. R. S. 12]

D.R.A.17

(7)

General and Revenue Secretariat. | Legis File No. of 1913-14

Serial No.

Subd.

(48) 29/8/14 1) Please put up the British Act with Comment and if any.

Sir 31/8

31/8

2) Subd. with a copy of the Guardian and Wards Act, 1890, by Mr K. C. Desikachar.

(48) 4/9/14 3) The section in the present Regulation is exactly like the section in British India. We intend the section when the guardian has not kept up the terms of the engagement seems much simpler than the one proposed.

4) The proposal, if adopted, will involve the Courts in an enquiry which it may not be convenient to have in the miscellaneous side.

5) As the objection to the proposed course appears to be, that as an order under S. 34 is not appealable, it is highly inequitable that such an important question should be finally disposed of in a summary manner. Necessary to look to Act in the shape of 2 pcs.

To be with Mr Desikachariar's Book

Subd Member

13/9

NOTE—Contn. sheet.

GPB—10,000—13-6-14

G. R. S. 12]

D.R.A.17-13

of 1376

(4f

General and Revenue Secretariat.

Legis File No. 17 of 1914-15

Serial No.	
	6. The subject does not seem to be correctly stated in the printed summary.
	7. The opinion of the Ch. Ct. ~~of the Lord Advocate~~ may be called for.
	14/9/14 Hm 15/9
	8. Please put up a draft. 15/9
	9. Subd. with a draft.
	(48) 16/9/14 10 Issue 17/9
1	No 1823 dated 21st Sept: 1914
	to the Regr. Chief Court
	Requests him to obtain and forward
	the opinion of the Chief Court on the
	D.R.A. subject No 17 of 1913.
2	No 1855-8/115 dated 28/10/14
	~~No 1330/84 dated 18 Sept: 1914~~ 22
	From the Regr. Chief Court
	Submits the opinion of the Chief Court
	on the above question.
	11. Submitted
	(48) 14/12/14

NOTE—Contn. sheet.

GMB—10,000—13-6-14

G. R. S. 12]

g 1326

General and Revenue Secretariat.

Legis File No. 17 of 1914-15

(5)

Serial No.

12 The learned Chief Judge and the Second Judge are opposed to any change in the present law. The 3rd Judge Mr Paramasiva Iyer suggests that the law may be amended so that the procedure adopted in S. 145 of the Civil Procedure Code with regard to security bond may also be adopted with regard to security bonds executed under S. 336 of the Guardians & Wards Act.

13 With due deference, it must be stated that the nature of the enquiry cannot be so simple as in the case referred to in S. 145 and that the cases are not analogous.

14. A draft in accordance with the opinion of the majority of the Judges of the Chief Court is herewith submitted for approval or other orders.

EB 2/1/15

First Member)

with Mr Devkadhanam's Guardians & Wards Act & a copy of the Regn.

15. I think that there is some distinction between S. 34 of the C.P.C. & S. 145 C.P.C. In the latter, the liability is ascertained by a decree.

16. The procedure in S. 214 Com. Regn seems to be somewhat similar. I see no reason why this should not be followed.

17. Please see if any authority

NOTE—Contn. sheet.

PB—10,000—13-6-14

Serial No.

can be found in any foreign system for the course proposed.

6/1/15

Hon
7/1

EB 7.1.15.

18.

Please put up the English Law Books asked for by Subrd.

EB 7.1.15

Subrd.

19. Chitty's Statutes and Halisbury's Laws of England were both referred to under the heading "Infants". A provision like the above are suggested by Justice Paramasiva Iyer is not contained therein.

(38)

26/1/15 20. In England, the guardian of the estate of a minor appointed in the Chancery Division of the High Court is required to enter into a recognizance duly to account, with two sureties. These recognizances were being enforced by the writ of Scire facias; but Scire facias on recognizances was abolished. In Kerr on Receivers, it is stated that "at the present day, however, the proceeding by Scire facias, though still available, is practically obsolete." It is stated that a recognizance may be put in Suit by an action of debt.

Sy Encyclopaedia of Laws p 429.

NOTE—Contn. sheet.

G. R. S. 12]

(7)

General and Revenue Secretariat. | Legs File No. 17 of 191 14

Serial No.

In Daniell's Chancery Practice, it is stated that the law on this point with regard to the recognizance of bail is the same as in the case of a writ of summons. In this the procedure described with regard to this writ of Sum Facias clearly shows that the proceedings are practically the same as in a regular action.

21. A careful consideration will show that even in England the Summary procedure recommended by Mr Paramaswara Iyer has not been adopted, though the machinery is highly organised and elaborate.

Eg 28/2

Dist- & Members)

22. I think there is much to say for Mr. Justice P. Iyer's position that a bail may have ~~the~~ a ~~the~~ remedy similar to that given to shareholders & creditors of an insolvent Company by S. 214 of the Companies' Regn. But in deference to the opinion of the majority of the Judges further action may at this

NOTE—Contn. sheet.

GPB—25,000—2-11-14

1376

G. R. S. 12]

General and Revenue Secretariat. | Legis File No. 17 of 1916-15

Serial No.	
	Sent be stayed.
	14/3/15
	17.3.
	23) done
3.	To the Registrar, chief court
	the D C Bangalore Ol for communication to two members.
	No J 3170-1 Dt 20-3-15.
	States that it is not necessary at present to amend Sec 34 of the Guardian & Wards Regulation 1911 as proposed

NOTE—Contn. sheet.

GPB—25,000—2-11-14

G. R. S. 26] 17/9

Legi File No. 17-14
Serial No. 1

Diary No. of letter replied to

No. J 823.

General and Revenue Secretariat
( )
, *the* 191 .

To

The Registrar Chief Court
of Mysore, Bangalore

Sir

I am directed to invite
your attention to subject
No 17 of 1913 of the Proceedings
of the Representative Assembly
regarding the amendment
of section 34 of the Guardian
and Wards Regn, IX of 1911, so as
to enable the court to proceed
against the Surety without
the necessity of an assign-

over.

Date of issue 21/9/1914.

Signed by Sm G Srinivasa Iyer

SUBJECT.

R
15/9

ment of the Surety bond
I am directed and to
request you to obtain the
opinion of the chief court-
thereon.

I have &c.

18 14/9/14

for Secretary to Govt.

Copied by

Examined by KB 1/9

GPB—25,000—4-3-13

No. 1858 Legis. 1
115

Chief Court of Mysore

Bangalore, 28th October 1914.

(3)

28 DIARY No. J. 1376

19 TION No. IAL No. 2

From,

N.T. Gopalaiengar Esquire, B.A., L.L.B.,

Registrar, Chief Court of Mysore,

BANGALORE.

To,

D.M. Narasinga Rao Esquire B.A., B.L.,

Offg: Secretary to the Government of Mysore,

General and Revenue Departments.

Sir,

Adverting to your letter No J.823/Legis.17-14-1 dated 21st September 1914, requesting to be furnished with the opinion of the Chief Court, regarding the amendment of section 34 of the Guardian and Wards Regulation, V of 1911 so as to enable the Court to proceed against the surety without the necessity of an assignment of the surety bond, (subject No. 17 of the proceedings of the Representative Assembly of 1913), I am directed to forward herewith the opinions of the Judges of the Chief Court in the matter.

I have the honor to be,

Sir,

Your most obedient servant,

N. T. Gopalaiengar

REGISTRAR.

(4

Opinion.

The Chief Judge:- Unless we know what is the objection to the present course and what is proposed as the remedy, we can't be expected to give an opinion.

Mr Justice Chandrasekhara Aiyar:-

I agree

Mr Justice T. Paramasiva Iyer:-

It seems to me the method provided by section 34 to guard a minor's interests is clumsy and unsatisfactory. The Court being responsible for the minor's property I do not see why it should wait for an 'application by petition' by somebody who may not turn up to find out if a guardian appointed by Court furnishing accounts and responsible to it, has misappropriated the minor's properties. The Court in my opinion should exercise due vigilance and enforce the terms of the bond after due enquiry itself, as in the case of any other security bond given by a judgment debtor or witness &c. As it is, the section is calculated to enable a Court to shirk its responsibility for due safeguarding of the interests of a minor in its charge and even if there are disinterested friends of the minor willing to prove a guardian's misconduct to the Court, they would be deterred from doing so by the prospect of expensive litigation on behalf of the minor, advancing or applying for money, and incurring endless worry. I would propose (1) where no person who can give substantial security is forthcoming to undertake the duties of a guardian of property the Deputy Commissioner should be constituted the guardian. (2) Where there is reason to believe a guardian of property who has given a bond under clause (a) of section 33 has not fulfilled the engagement of his bond, the Court may, of its own motion or an application by any person interested in the minor, enquire into the matter,

(3)

the Sheristedar of the Court or applicant interested, as the case may be, representing the minor at the enquiry, and if satisfied that the guardian has been guilty of a breach of the conditions of the bond, enforce the penalties prescribed in the bond to the extent of making good the loss to the ward's estate resulting from the breach. (3) Every order against a guardian under section 34 shall be appealable to the Chief Court. (4) Omit section 35.

The Chief Judge:-

I don't know that there is anything to prevent the assignment of the bond to the Sheristedar, if that is considered a satisfactory course. At any rate an enquiry in the form of a suit in which the Judge is not a party is a better method than the departmental enquiry necessary in some cases.

When the judge finds it necessary to remove a guardian and appoint another, the assignment can be to the other; where the misdeeds of the guardian are not ascertained before the ward attains majority, the bond can be assigned to the ward; in either case there should be no difficulty.

To my mind the suggestions of Paramasiva Iyer J. tend to convert the District Court ~~with~~ into a Court of Wards in a way that the Regulation does not contemplate. It may be desirable that this should be done but it should be done as part of a fully considered scheme. To my mind section 34 does not require amendment, but as Paramasiva Iyer J. is of a different opinion, it will be best to send up the individual opinions to Government.

Mr Justice Chandrasekhara Aiyar:-

I agree with the Chief Judge and would await some experience of the working of the existing rule before considering the desirability of a change.

Mr.

(6)

Mr Justice T. Paramasiva Iyer:-

I wish to add with the highest deference that the only question raised by me was why in enforcing a security bond taken from a guardian of property to safeguard the estate of a Ward in the charge of a District Court, the bond should not be enforced in the manner prescribed in section 145 of the Civil Procedure Code, after an enquiry similar to what is prescribed in section 47 of the same Code and with right of appeal as under that section. In a poor country like Mysore where general culture, sustained energy and practical altruism are at such a low level, the protection afforded by section 34 is nil and it might just as well not exist. For the protection of the shareholders and creditors of a company the Companies Regulation III of 1895 provides in section 214 as follows:- 'Where in the course of the winding up of a company it appears, that any..... ....Liquidator &c has misapplied or retained in his own hands or become liable or accountable for any moneys of the Company, the Court may.....examine into the conduct of such.....Liquidator &c and compel him to repay any moneys so misapplied, retained &c with, interest at such rate as the Court thinks ~~fit~~ just'. I think a ward of a Court is entitled to as cheap, prompt and effective a remedy against mismanagement of his estate as the shareholders and creditors of a company in liquidation and the old minor's Rules which I regret were superseded by the present elaborate Regulation contain no provision for the selection of a proper person as an assignee of the Court to file a regular suit in the proper Court as trustee for the ward.

T. Ramalingam

REGISTRAR.

G.R.S. 28]

1913

(7)

Legis File No. 17-14
Serial No. 3

*Diary No. of letter replied to*_____

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.
( )

, *the* 191 .

READ—

Subject- No 17 of the Proceedings of the sittings of the Representative Assembly in 1913 regarding the amendment of sec: 36 of the Guardian and Wards Regulation V of 1911,-

Date of issue 20/3/1915.

Signed by M G Srinivasa Iyr

ORDER THEREON.—No.

Order thereon :- J 3170-1

Government do not consider it necessary to

over

2. Letter No 1858/1115 dated 28th October 1914 from the Registrar, chief Court of Mysore forwarding the opinion of the Judges of the chief Court on the proposal

SUBJECT.

GPB—50,000—1-12-12

6/2/15

8)

at present, to amend section 34 of the Guardian and Wards Regulation, 1911, as proposed.

ES 21/1/15.

For Secretary to Govt

do

The D.C. Bangalore Dt. for communication to the member who mooted the subject in the R.A.

~~The Registrar chief court of Mysore~~

~~The D.C.'s of other Dts~~

Copy to the Dasara Section

14/3/15

comp

& ms K.G.

19/3/15